

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

CAROLINA AVILOR,
Plaintiff

VS.

SEYED NABVAVI and
WERNER ENTERPRISES, INC.,
Defendants

CIVIL ACTION NO. 4:17-cv-00747
JURY REQUESTED

**DEFENDANT'S NOTICE OF REMOVAL
OF CIVIL ACTION**

COMES the Defendant Werner Enterprises, Inc. (“Werner”), and files this Notice of Removal, pursuant to 28 U.S.C. §§ 1332, 1441 and 1446.

1. The Plaintiff, Carolina Avilor (“Plaintiff”), filed the Plaintiff’s Original Petition on January 12, 2017 in the 215th District Court in Harris County, Texas, which is within the Houston Division of the United States District Court for the Southern District of Texas. The case carries the style of: Cause No.: 2017-02367; *Carolina Avilor v. Seyed Nabvavi and Werner Enterprises, Inc.* Under 28 U.S.C. § 1446(a), removal to this Division of this District is proper.

2. In the Original Petition Plaintiff alleges that on or about October 16, 2015, Seyed Nabvavi (“Nabvavi”), an employee of Werner, operated a vehicle in a negligent manner causing an accident in which the Plaintiff was allegedly injured. Plaintiff claims to have sustained serious bodily injuries and damages and is seeking to recover (a) physical pain and suffering in the past and future, (b) mental anguish in the past and future; (c) medical expenses in the past and future; (d)

physical impairment in the past and future; (e) loss of past wages; (f) loss of future earning capacity; (g) pre and post judgment interest; and (h) attorney's fees. The Plaintiff's Original Petition alleges a monetary relief over \$200,000 but not more than \$1,000,000.00. See Plaintiff's Original Petition, ¶ VI filed with the Court attached hereto as Exhibit "A."

3. A copy of Plaintiff's Original Petition is attached hereto as Exhibit "A." Defendant Seyed Nabvavi has not been served as of the date of the filing of this Notice of Removal, and Werner was served by process server on February 10, 2017. See Return of Service filed with the Court for Werner attached hereto as Exhibit "B."

4. On or about February 27, 2017, Werner filed Defendant's Original Answer, a copy of which is attached hereto as Exhibit "C," and served a copy of said Original Answer upon counsel for the Plaintiff in this Action by facsimile transmission and e-file service.

5. Plaintiff is an individual and a resident and citizen of the State of Texas.

6. Werner is a corporation incorporated in the State of Nebraska with its principal place of business in Omaha, Nebraska (see Plaintiff's Original Petition, ¶ II).

7. Nabvavi is an individual and is a resident and citizen of the California.

8. This Notice of Removal is timely as it was filed within the 30 day time period required under 28 U.S.C. § 1446(b).

9. The Action is one which may be removed to this Court by the Defendants pursuant to 28 U.S.C. §§ 1441 and 1446, and over which this Court has original jurisdiction pursuant to 28 U.S.C. § 1332, in that diversity of citizenship exists between the Plaintiff and the Defendants hereto, and the amount in controversy exceeds \$75,000.00, exclusive of interest and costs.

10. Removal is not barred by 28 U.S.C. § 1445.

11. 28 U.S.C. § 1446(a) and local Rule 81, Werner has attached hereto: an Index of Documents being filed as Exhibit D; a copy of the state court docket sheet as Exhibit E; and a list of all counsel of record as Exhibit F. Notice of Consent is not necessary as Defendant Nabvavi has not yet been served. 28 U.S.C. §1446(b)(2)(A).

12. All pleadings, process, orders, and other filings in the state court action are attached to this notice as required by 28 U.S.C. §1446(a).

13. Venue is proper in this District under 28 U.S.C. §1441(a) because the state court where the action has been pending is located within this District.

14. This Notice of Removal is being filed in the record office of the Clerk of the United States District Court for the Southern District of Texas (Houston Division).

14. Defendant will promptly file a copy of this Notice of Removal with the Clerk of the state court where the action has been pending.

15. Defendant demanded a jury in the state court action and hereby demand a jury trial.

16. On or about the date of this filing, Defendant served upon counsel for the Plaintiff a copy of the “Defendant’s Notice of Removal of Civil Action.”

REQUEST FOR HEARING AND JURISDICTIONAL DISCOVERY

17. If Plaintiff contests this removal, Defendant requests:

- (a) a hearing regarding this Court’s jurisdiction over, and the propriety of removal of this matter; and
- (b) leave to conduct limited discovery related to issues surrounding the existence of diversity jurisdiction.

WHEREFORE, the Defendant WERNER ENTERPRISES, INC., by counsel, requests that this Court remove the action from the Harris County District Court to The United States District Court for the Southern District of Texas Houston Division.

Respectfully submitted,

BAIRHILTY, P.C.

/s/Amanda S. Hilty

TBN: 09683030

FBN: 0187

14711 Pebble Bend Drive

Houston, Texas 77068-2923

Telephone: (713) 862-5599

Facsimile: (713) 868-9444

Email: ahilty@bairhilty.com

**ATTORNEY FOR DEFENDANT,
WERNER ENTERPRISES, INC.**

OF COUNSEL:

Bill S. Sanford

TBN: 24041864

FBN: 1086354

14711 Pebble Bend Drive

Houston, Texas 77068

Telephone: (713)862-5599

Facsimile: (713)868-9444

Email: bsanford@bairhilty.com

**ATTORNEY FOR DEFENDANT,
WERNER ENTERPRISES, INC.**

OF COUNSEL:

Wendi R. Ervin

TBN: 06651220

FBN: 13873

14711 Pebble Bend Drive

Houston, Texas 77068

Telephone: (713)862-5599

Facsimile: (713)868-9444

Email: wervin@bairhilty.com

**ATTORNEY FOR DEFENDANTS,
WERNER ENTERPRISES, INC.**

CERTIFICATE OF SERVICE

I hereby certify that all counsel of record who are deemed to have consented to electronic service are being served with a copy of this document via the Court's CM/ECF system per S. Dist. Tex. Loc. R. LR5.1 on the 8th day of March, 2017. A true and correct copy of the foregoing Defendants' Notice of Removal was served upon counsel of record in compliance with the Federal Rules of Civil Procedure by certified mail, return receipt requested, telephonic communications, hand delivery and/or U.S. Mail on this the 8th day of March, 2017.

Loren G. Klitsas
Jared W. Capps
Klitsas & Vercher, P.C.
550 Westcott, Suite 570
Houston, Texas 77007

/s/ Amanda S. Hilty _____
AMANDA S. HILTY